

ANALYSIS OF PROPOSED REVISION TO SENATOR ERVIN'S
ROUGH DRAFT PROPOSED AMENDMENTS TO S. 782*

Proposed Amendment by Senator Ervin	REVISION	EXPLANATION
Sec. 1(k), p. 8, line 5, after the word "requests," strike period and insert following: ": Provided, however, That a civilian employee of the United States serving in the CIA, the NSA, or the FBI may be accompanied by counsel, or by a person of his choice who serves in the agency in which the employee serves, who has been cleared as a good security risk by that agency for the purpose of the case."	Sec. 1(k), p. 8, line 5, after the word "requests," strike period and insert following: ": Provided, however, That a civilian employee of the United States serving in the CIA or the NSA may be accompanied only by a person of his choice who serves in the agency in which the employee serves or by counsel who has been approved by the agency for access to the information involved."	The revision was made for purposes of clarification and does not change the intent of the original wording. That wording connotes a "security clearance," a technical term involving a formal process intended to control access to classified information at a number of different levels in an enduring work situation. The suggested revision represents the more temporary and less sweeping needs of the situation, while still fully serving the objectives of the original language.

* NOTE:

1. All references to the FBI have been deleted.
2. In addition to the proposed revisions of Senator Ervin's proposed amendments, a revision of section 1(a) of the bill has been proposed as follows:
On page 2, line 15, insert after the word "origin" the words "or citizenship" and after the word "employee" the words "or person, or of his forebears . . .".
This revision recognizes that where citizenship is not a statutory condition of employment, it, as well as national origin, can be an important consideration in determining suitability for a particular assignment for employees and applicants, as can the citizenship or national origin of their forebears.

Proposed Amendment
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REVISION

EXPLANATION

Sec. 6, p. 19, at line 2, to read:

"a personal finding with regard to each grade or category of duties that such test or information is required to protect the national security."

Sec. 6, p. 19, at line 2, to read:

"a personal finding that such test or information is required to protect the national security."

The revision does not change the underlying concept authorizing a personal finding that tests or examinations are required to protect the national security. Further review of the original language indicates that a grade or category of duties criterion would result in the establishment of arbitrary standards which are unworkable in practical application.

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

"Provided further, however, That no civilian employee of the United States serving in the CIA, the NSA, or the FBI shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation: Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the directors of the

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

"Provided further, however, That no civilian employee of the United States serving in the CIA or the NSA, and no applicant for employment with those agencies, and no individual or organization acting in behalf of such employee or applicant, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation:

The revision includes applicants and assures that they are afforded no greater freedom of action than employees; it also binds those acting for applicants and employees to the same procedural rules; provides for extension of the 120 days upon a personal finding by the director of CIA or NSA that more time is necessary to resolve the case; and makes technical changes in the penultimate proviso to conform to 50 USC 833 which reposes the authority to terminate employees of NSA in the Secretary of Defense in the first instance with an authorized delegation to the director of NSA.

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Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee:" ...

Provided further, however, That the above period of 120 days may be extended if deemed necessary on a personal finding by the director of the agency involved: Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 USC 403(c) and the authorities available to the National Security Agency under 50 USC 833 to terminate the employment of any employee:"...

On p. 19, line 20, add a new Sec. 8:

"Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the CIA, the NSA, or the FBI to protect or withhold government information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsection (k), or in any civil action under section 4, or in any proceeding or civil action under section 5.

On p. 19, line 20, add a new Sec. 8:

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The revision deletes the word "government" in the phrase "government information" to eliminate any possible conflict over the various language, e.g., official information, military information, classified defense information, intelligence sources and methods, used in statute or executive order to describe the information to be protected; and removes, as unnecessary, the restraints on outside counsel receiving classified information during an interrogation under section 1(k).

To: John Maury
From: Dave Barnhill, assistant to Larry Conrad
Re: New proposal for amending S. 782 (with comparison to previous amendment)
Note: The final wording of the proposed amendment has not been completed. This is only the rough draft.

COMPARISON OF PROPOSED AMENDMENTS TO S. 782

COPY

1. Amendment discussed before subcommittee:
 - (a) exemption of F.B.I., N.S.A., and C.I.A. from section 1, subsection k, section 4, and section 5 "if the head of the agency determines that the above-specified provisions cannot be applied in a manner consistent with national security requirements and considerations."
 - (b) Provided, that "nothing contained in this section shall be construed to prohibit an employee of any agency contemplated by this section, who is under investigation for misconduct, from having present during interrogation which could lead to disciplinary action, or seeking advice and counsel of, a fellow employee of his choice from such agency."
 - (c) Provided, that " nothing contained in this section shall be construed to prevent an employee of any agency contemplated by this section claiming to be affected or aggrieved by any violation or threatened violation of this Act from filing a written complaint with the Board on Employee's Rights."
 - (d) Provided, that "such complaint may be filed only after all procedures for adjudication such complaints within the agency concerned have been exhausted and a final adverse decision has been rendered in writing by the head of the agency concerned."
 - (e) Provided, that "nothing in this Act shall affect or modify the authority of the Director of Central Intelligence Agency as set forth in section 102(c) of the National Security Act of 1947, as amended, or the authorities set forth in Subchapter III of Title 50 of the U.S. Code (P. L. 88-290)."

This would be a new section 8.
2. Rough wording of new language as proposed by Senator Ervin:
 - (a) Section 1, subsection k, page 8, at line 5, after the word "request" strike the period and insert the following:

" ;Provided, however, that a civilian employee of the United States serving in the C.I.A., the N.S.A., or the F.B.I. may be accompanied by counsel, or by a person of his choice who serves in the agency

 - i in which the employee serves, who has been cleared as a good security risk by that agency for the purpose of the case."
 - (b) Section 6, on page 19, at line 2, after the word "each", strike "individual to be so tested or examined" and insert the following:

"grade or category of duties"
 - (c) Add a proviso to Section 7, page 19, at line 16. After the words "employee rights:" insert the following:

Provided further, however, that no civilian employee of the United States serving in the C.I.A., the N.S.A., or the F.B.I. shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation;

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Provided further, however, that nothing in this Act shall be construed to affect any existing authority of the directors of the Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee.

(d) On page 19, line 20, add a new Section 8:

"SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the C.I.A., the N.S.A., or the F.B.I. to protect or withhold government information pursuant to statute or executive order. The person's certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsection k, or in any civil action under section 4, or in any proceeding or civil action under section 5.

Major differences between amendment 1 and 2

1. Amendment 2 extends the employee's right to counsel by allowing outside counsel if the agency clears counsel as a good security risk for the purpose of the case. see 2(a) and 1(b)
2. Amendment 2 limits the time for adjudication of the complaint within the agency to 120 days. see 2(c) and 1(c) and 1(d)
3. Amendment 2 allows the Director of the agency or his designee to make a personal finding on the necessity of the tests stipulated in Section 6 with regard to grade or category of duties. see 2(b)
4. Amendment 2 uses different language for safeguarding the present powers of the agencies and protecting government secrets. see 2(b) and 2(d) and 1(a) and 1(e)

Questions concerning amendment 2

- Does Does 2(b) and 2(d) provide sufficient safeguards for retaining necessary powers and protecting government secrets?
2. Is 120 days enough time to adjudicate every possible complaint?
 3. 2(e) replaces "individual" with "grade or category of duties." Would it be desirable or necessary to include both? i.e. "...individual, grade, or category of duties to be so tested."

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Paper as taken by [] and given to Larry
Conrad on